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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Calaveras)

TODD ROBBEN, Plaintiff and Appellant, v. DEPARTMENT OF MOTOR VEHICLES, Defendant and Respondent.	C080542 (Super. Ct. No. 15CV40748)

Plaintiff Todd Robben, then (as now) representing himself, filed a petition for a writ of administrative mandate to set aside the suspension of his driver's license after an "administrative per se" proceeding before defendant Department of Motor Vehicles (DMV). In October 2015, the trial court issued orders denying Robben's motion to strike

the DMV's answer and enter default judgment, and denying the petition. Robben filed a premature notice of appeal, after which the trial court entered judgment in the DMV's favor. We will deem the notice of appeal to be filed immediately after the judgment. (*Fuller v. First Franklin Financial Corp.* (2013) 216 Cal.App.4th 955, 959.)

On appeal, Robben contests only the denial of his motion to strike DMV's answer.[1] We thus deem his appeal from the denial of his petition on the merits to be abandoned. (*Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 544, fn. 8; *People v. Hudson* (2016) 244 Cal.App.4th 1318, 1321, fn. 3.) We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In light of the posture of this appeal, we need touch only lightly on the background facts. As the result of an August 2014 traffic stop, Robben submitted to a breath test that indicated he had a blood-alcohol concentration of 0.09 percent. A hearing officer denied his challenge to the suspension of his license in December 2014, dissolving the stay of the suspension and reimposing it through April 2015. Robben filed the present action in March 2015. After denying his motion for a stay of his suspension and a motion for reconsideration, the trial court issued a minute order removing the matter from its case management system. In response to Robben's petition for a writ of mandate in this court, we directed the DMV to file an answer or demurrer in the trial court to Robben's petition in order to allow the matter to proceed to a final disposition. (*Robben v. Superior Court* (June 25, 2016, C079288).) The DMV filed an answer in July 2015, which stated, "Petitioner's pleading does not contain any enumerated factual allegations. Rather, the

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[1] Acknowledging that the order denying the motion is not itself appealable, and noting that this order is not specified in the notice of appeal, the DMV makes the suggestion that somehow the order otherwise is not embraced in the appeal from the judgment. As the DMV does not provide any authority in support of this suggestion, we do not consider it any further.

entire pleading consists of legal argument by Petitioner, and on that basis Respondent denies said allegations." The cover page of the answer includes a handwritten notation, "By Fax." In response, Robben filed a motion to strike the answer and enter a default judgment because, in his view, the DMV had directly faxed its answer to the superior court rather than employing a "fax filing agency" as required by court rules. The DMV did not file opposition. In October 2015, the trial court issued an order denying the motion, stating: "Petitioner's argument that respondent's answer should be stricken because it was directly faxed to the Court for filing without a prior court order allowing filing by such method is factually incorrect. The answer was properly filed through a designated fax filing agency in full compliance with all applicable local rules and California Rules of Court." The trial court also issued an order denying the petition; rejecting Robben's arguments about the hearing officer's failure to grant a third continuance to obtain an attorney or await the resolution of the criminal charges for driving under the influence, the court concluded that "the administrative record, including the exhibits admitted into evidence, supports the administrative findings [on the necessary elements to support a suspension]."

DISCUSSION

Robben asserts that the trial court was wrong in finding that the answer was filed by means of a designated fax filing agency. He bases this conclusion on the absence of a proof of service from a fax filing agency, and the handwritten notation "By Fax." However, the latter is not affirmative proof that the trial court's factual finding was erroneous. The agency does not *serve* the faxed document (which bears its own proof of service on the opposing party); it acts as a party's agent in *filing* a document faxed to it with the court. Its *act* of filing is all the certification needed of compliance with procedures, and it does not need to provide any other written certification. Moreover, a

faxed document filed through an agency bears *only* the notation "By fax." (Cal. Rules of Court, rule 2.303(a), (b), (e) & (f).) Therefore, the premise of Robben's argument fails.

Robben alternately argues that the answer is "void of any meaningful opposition" and therefore conceded the merits of his petition. Charitably, assuming that the motion to strike the answer also embraced a demurrer to the answer (Code Civ. Proc., §§ 430.40, subd. (b), 1091, 1109; 8 Witkin, Cal. Procedure (5th ed. 2008) Extraordinary Writs, § 198, p. 1101), Robben misunderstands the office of an answer. An answer need contain only general or specific denials of *material allegations* of the petition (Code Civ. Proc., § 431.30, subd. (b)); "[i]mmaterial or improper allegations in the [petition] (*such as conclusions of law . . .*) *. . . need not be answered . . . .*" (5 Witkin, *supra*, Pleading, § 1051, p. 492, italics added.) As a result, that was all the DMV needed to include in its answer. Robben fails to cite to any material allegations of fact that the DMV admitted by failing to respond such that he was entitled to a default judgment as a result. We will not independently examine the record or make his argument for him. (*People v. Smith* (2015) 61 Cal.4th 18, 48; *Imagistics Internat., Inc. v. Department of General Services* (2007) 150 Cal.App.4th 581, 591, fn. 8, 593.) Even though he is self-represented, this does not entitle Robben to any special consideration on appeal (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247) because it would create a quagmire that is unfair to his opponent and other parties with claims upon our scarce judicial resources (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985). We therefore reject this argument.

DISPOSITION

The judgment is affirmed.

BUTZ, J.

We concur:

HULL, Acting P. J.

MAURO, J.